

REMARKS

In response to the above-identified Office Action, Applicants amend the application and seek reconsideration thereof. Applicants amend claims 1, 6 and 7. Applicants do not cancel or add any new claims. Accordingly, claims 1-7 are pending.

I. Summary of Interview with Examiner

An interview was conducted with the Examiner on July 30, 2003 via telephone. The Examiner explained his rejection of the claimed subject matter including the elastic member claimed in claims 1, 6 and 7. Specifically, the Examiner explained the manner in which he believed U.S. Patent No. 6,426,830, issued to Robinson (hereinafter "Robinson") teaches an elastic member. A brief discussion was also entered regarding the placement of the elastic member in the present application and in Robinson. The Examiner agreed that Robinson did not explicitly teach an elastic member positioned in the air gap between the movable mirror and the fixed mirror. Rather, the MEMS device of Robinson was positioned outside of this air gap.

II. Rejection of Claims 1-7 under 35 U.S.C. § 103(a)

Claims 1, 4, 6 and 7 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,789,915 issued to Scobey (hereinafter "Scobey"), in view of Robinson and U.S. Patent No. 6,324,192 issued to Aksyuk et al (hereinafter "Aksyuk"). Claim 3 stands rejected under 35 U.S.C. § 103(a) as being obvious over Scobey, Robinson, and Aksyuk in view of U.S. Patent No. 6,324,192 issued to Tayebati (hereinafter "Tayebati"). Claim 2 stands rejected under 35 U.S.C. § 103(a) as being obvious over Scobey, Robinson, and Aksyuk in view U.S. Patent No. 4,751,509 issued to Kubota et al (hereinafter "Kubota"). Claim 5 stands rejected under 35 U.S.C. § 103(a) as being obvious over Scobey, Robinson and Aksyuk and in further view of U.S. Patent No. 4, 887,109 issued to Fujita et al (hereinafter "Fujita") and U.S. Patent No. 5,990,769 issued to Tam (hereinafter "Tam").

In order to establish a *prima facie* case of obviousness, the Examiner must show that the cited references, combined, teach or suggest each of the elements of a claim. Independent claims 1, 6 and 7 have been amended to include the elements of an elastic member which is disposed between the fixed mirror and the movable mirror. The Examiner relies on Robinson for teaching an elastic member as claimed in claims 1, 6 and 7. However, the MEMS device 100 which the Examiner equates with the claimed elastic member is not disposed between the fixed mirror and movable mirror. Rather, the MEMS device 100 of Robinson is positioned outside of the air gap between the fixed and movable mirrors. See Figure 2 of Robinson. The movable mirror 30 of Robinson is positioned between the fixed mirror 20 and the MEMS device 100 as identified by the Examiner. Thus, Robinson does not teach an elastic member positioned between a movable mirror and fixed mirror as claimed in claims 1, 6 and 7. Further, the Examiner has not indicated and the Applicants have been unable to discern any part of the other cited references that teach these elements of claim 1, 6 and 7. Thus, the cited references combined do not teach or suggest each of the elements of claims 1, 6 and 7. Therefore, claims 1, 6 and 7 are not obvious over the cited references. Accordingly, reconsideration and withdrawal of the obviousness rejection of claims 1, 6 and 7 are requested.

In regard to dependent claims 2-5, these claims depend from independent claims 1, 6 and 7 and incorporate the limitations thereof. Thus, at least for the reasons mentioned in regard to claims 1, 6 and 7, the dependent claims 2-5 are not obvious over, Scobey, Robinson, Aksyul, Tam, Kubota, Tayebati and Fujita. Accordingly, reconsideration and withdrawal of the obviousness rejection of claims 2-5 are requested.